

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JESUS LOPEZ,

No. C 08-2071 WHA (PR)

Petitioner,

**ORDER TO SHOW CAUSE**

v.

BEN CURRY, Warden,

Respondent.

Petitioner, a California prisoner currently incarcerated at the Correctional Training Facility in Soledad, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the filing fee.

The petition attacks denial of parole, so venue is proper in this district, which is where petitioner is confined. *See* 28 U.S.C. § 2241(d) (venue proper in both district of conviction and district of confinement).

**DISCUSSION**

**A. STANDARD OF REVIEW**

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ

1 of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state  
2 court must “specify all the grounds for relief which are available to the petitioner ... and shall  
3 set forth in summary form the facts supporting each of the grounds thus specified.” Rule 2(c) of  
4 the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254. “[N]otice’ pleading is not  
5 sufficient, for the petition is expected to state facts that point to a ‘real possibility of  
6 constitutional error.’” Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d  
7 688, 689 (1st Cir. 1970). “Habeas petitions which appear on their face to be legally insufficient  
8 are subject to summary dismissal.” *Calderon v. United States Dist. Court (Nicolaus)*, 98 F.3d  
9 1102, 1108 (9th Cir. 1996) (Schroeder, J., concurring).

10 **B. LEGAL CLAIMS**

11 In a 1986 bench trial petitioner was convicted of second degree murder with use of a  
12 weapon. He received a sentence of seventeen years to life in prison. In August of 2006 the  
13 Board of Parole Hearings granted him a parole date, but the grant was reversed by the governor  
14 on December 21, 2006. This petition is directed to the governor’s decision. He alleges that he  
15 has exhausted his claim by way of state habeas petitions.

16 As grounds for federal habeas relief, petitioner asserts that the governor’s decision was  
17 not supported by “some evidence” and thus violated due process. This allegation is sufficient to  
18 require a response. *See McQuillion v. Duncan*, 306 F.3d 895, 904 (9th Cir. 2002) (due process  
19 requires that at least “some evidence” support parole denial).

20 **CONCLUSION**

21 1. The clerk shall mail a copy of this order and the petition with all attachments to the  
22 respondent and the respondent’s attorney, the Attorney General of the State of California. The  
23 clerk shall also serve a copy of this order on the petitioner.

24 2. Respondent shall file with the court and serve on petitioner, within sixty days of the  
25 issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing  
26 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.  
27 Respondent shall file with the answer and serve on petitioner a copy of all portions of the state  
28 trial record that have been transcribed previously and that are relevant to a determination of the

1 issues presented by the petition.

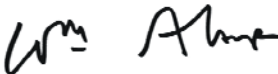
2 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the  
3 court and serving it on respondent within thirty days of his receipt of the answer.

4 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer,  
5 as set forth in Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a  
6 motion, petitioner shall file with the court and serve on respondent an opposition or statement of  
7 non-opposition within thirty days of receipt of the motion, and respondent shall file with the  
8 court and serve on petitioner a reply within 15 days of receipt of any opposition.

9 4. Petitioner is reminded that all communications with the court must be served on  
10 respondent by mailing a copy of the document to respondent's counsel. Papers intended to be  
11 filed in this case should be addressed to the clerk rather than to the undersigned. Petitioner also  
12 must keep the court informed of any change of address by filing a separate paper with the clerk  
13 headed "Notice of Change of Address," and comply with any orders of the court within the time  
14 allowed, or ask for an extension of that time. Failure to do so may result in the dismissal of this  
15 action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). *See Martinez*  
16 *v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

17 **IT IS SO ORDERED.**

18  
19 Dated: May 13, 2008.

  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

JESUS LOPEZ,

Plaintiff,

v.

BEN CURRY et al,

Defendant.

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Case Number: CV08-02071 WHA

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 13, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jesus Lopez  
D-31780/ BW-201  
Correctional Training Facility  
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Soledad, CA 93960

Attorney General's Office  
455 Golden Gate Ave  
San Francisco, CA 94102

Dated: May 13, 2008

Richard W. Wieking, Clerk  
By: D. Toland, Deputy Clerk